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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulations	)	

REPLY COMMENTS
of
NATIONAL RURAL TELECOMMUNICATIONS ASSOCIATION
AND
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

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SUMMARY

The Commission should heed the nearly unanimous call for a coordinated approach to access, universal service and separations reform. Because access revenues constitute the largest component of the revenues of small and rural telephone companies, there exist potentially significant universal service consequences from any material disruption of those revenues. Uncertainties related to the pending universal service and separations reform proceedings, combined with the variance in market conditions for rate of return (ROR) carriers, make it nearly impossible for the Commission to properly measure whether its reform proposals will result in comparable rates between urban and rural areas. To properly fulfill its § 254 obligations, the Commission should await final resolution of these other critical proceedings before implementing of a definitive new access charge regime for ROR companies.

The Commission should, however, provide interim, transitional changes to allow companies to respond to evolving market competition. Several parties request immediate and significant pricing flexibility. The Associations urge the Commission to examine interim changes that increase pricing efficiency yet also ensure both comparable rural/urban rates and services and geographic interexchange rate averaging. Several other parties support a shift in the recovery of a portion of ROR carriers' common line costs from interexchange carriers to the flat rate PICC. However, parallel price cap and ROR carrier subscriber line charge ceilings will do little to ensure interexchange rate parity both between rural and urban areas and among the states. Thus any imposition of PICC charges and increased SLC charges should include a ceiling at the nationwide average of the price cap companies, with the remaining common line cost recovered through the existing usage based charge, or, if necessary, universal service support.

The Associations oppose the notion of imposing <u>higher</u> PICC ceilings in ROR areas as a means of recognizing higher common line costs. Higher PICCs in high cost ROR areas will

threaten rate averaging and undermine rural access to interstate competition. The Associations also object to the imposition of higher SLCs on "non-primary" residential lines. The record shows that the Commission's rules requiring higher SLCs and PICCs on price cap carriers' secondary lines have caused several problems that remain unresolved. Moreover, application of the non-primary line distinction would discourage the growth in second lines that benefits subscribers by reducing per-line costs while facilitating residential access to advanced services such as the Internet.

Similarly, the Commission should reject various IXC proposals to reduce rate levels or eliminate current costs via some method of redefining regulatory terms. Such proposals are unsound, undermine the Act's rural rate parity objective, and present serious confiscation issues. The Commission should recognize that in any event, access rate levels are not the issue in review of the access charge structure. IXCs can raise challenges of that sort by objecting to annual rate filings. The Commission should instead explore constructive suggestions for coordinated access and universal service reform.

Finally, the Commission should not allocate general support facility costs to billing and collection. As explained by several individual, small carriers in this proceeding, the proposed GSF rule change would have a drastic impact on the ability of small rural LECs to recover their cost of provisioning the toll billing for interexchange carriers and could even motivate carriers to terminate billing and collection agreements with the IXCs altogether.

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The National Rural Telecommunications Association (NRTA) and the National Telephone Cooperative Association (NTCA) (hereafter, the Associations) submit these reply comments in response to comments filed on August 14, 1998, in the proceeding captioned above.1 The Associations' members are local exchange carriers ("LECs") providing access to interexchange carriers (IXCs) throughout rural America under the rate of return (ROR) regulatory regime. They are also all "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").2

I. THE PRESERVATION OF UNIVERSAL SERVICE AND THE TOLL RATE AVERAGING MANDATE MUST BY LAW CONTINUE AS AN ESSENTIAL STANDARD FOR THE COMMISSION'S REFORM EFFORTS

A. Most Parties Agree that the FCC Should not Make Permanent Access Changes for ROR LECs Now

Commenters are almost unanimous in recommending that the Commission defer the adoption of permanent ROR LEC access reform rules at this time.3 As stated in the initial comments, the Associations believe that the Commission should instead concentrate on interim, transitional changes. Commenters also agree that the imposition of any definitive new rate structure must be coordinated with the Commission's critical, pending universal service and separations proceedings.4

As the Eighth Circuit recently held in Southwestern Bell Telephone v. FCC,5 the Commission has both the discretion and the authority to delay the immediate adoption of its proposed cost-causative rate structures in the interest of preserving universal service. Furthermore, the court specifically affirmed the Commission's authority to consider transitional arrangements that permit carriers, subscribers and regulators to adjust to the new pricing system, and thus preserve the efficient operation of the network during the interim.6

The Commission should therefore rely on universal service goals and its authority as affirmed by the court in considering the proposed access reform measure for ROR carriers. The Commission has the discretion to adopt the recommended transitional mechanisms and proceed gradually until competition makes it appropriate and necessary for incumbent LECs (ILECs) to adopt non-prescriptive structures that follow market signals.

B. The Commission Should Defer Conclusive Access Charge Reform for Companies Until it Can Make a Comprehensive Impact Evaluation under the Statutory Standards

The Associations explained in their initial comments that the Commission should not undertake a definitive new access charge regime for LECs until effective federal universal service reform and the complementary separations framework have been properly implemented for the rural areas that the Associations' ROR membership serves. Rather, the

Commission should consider interim, transitional solutions that address such ROR carriers' needs for flexibility and new rate structures7 while at the same time avoiding premature action that could jeopardize the goals of universal service or frustrate the Commission's implementation of the standards of the 1996 Act.8

Several parties concur with the Associations' concerns and recognize also that adopting rules and regulations that ensure "comparable" rural and urban rates must be considered a primary objective of the Commission. For example, ITCs, Inc. labels the Act's rural/urban rate comparability requirement as a "key implementation constraint," and further states that "if reasonable comparability can not be achieved, then the principles of the act will be violated and the delicate balance between the three elements will be disrupted."9

Other parties echo this position. The Western Alliance, for example, correctly states:

> Congress declared that consumers in rural areas must have access to services reasonably comparable to those provided in urban areas at rates reasonably comparable to those charged for similar services in urban areas. This requirement of urban/rural comparability -- and not mere 'competition for competition's sake' -- must be the focus of this proceeding.10

Furthermore, nearly all commenting parties specifically identify the concurrent resolution of the universal service and related proceedings as a necessary prerequisite for sustainable access charge reform in ROR areas and the maintenance of the Congressionally mandated rural/urban rate comparability. USTA, TDS, the Telephone Association of New England (TANE) and the Small Western LECs all cite the unequivocal need for a coordinated approach in order to avoid compromising the high cost mechanism and urge the Commission to defer permanent reform measures to access until the complex changes to the universal service mechanism have been fully implemented.11 TANE12 and NECA also emphasize that the results of separations reform must be considered as well, as "changes to separations rules could move more revenue requirement to the local jurisdiction, thereby increasing pressure on local rates."13 In short, there is overwhelming support for the postponement of definitive ROR carrier access reform changes and application of the statutory universal service standards. Changes to the access rate structure must be timed and coordinated with the Joint Board's activities to harmonize the Act's overlapping and potentially conflicting mandates.

1. MCI's Call for Higher ROR SLCs Would Thwart Rural Rate Parity

Although MCI's comments reiterate the industry-wide call to resolve outstanding issues first in the universal service proceeding, submitting that the time is not "ripe" for access reform for ROR LECs,14 MCI's recommendation for parallel price cap and ROR carrier SLC ceilings will do little to ensure interexchange rate parity both between rural and urban areas and among the states. Without a nationwide cap such as the one the Associations have suggested, charges for ROR carriers' customers will, in fact, be much higher than those for price cap companies' customers.15

The Associations, therefore, do not agree with MCI's notion that there exists "no reason not to increase the rate-of-return carriers' multiline business SLC cap to at least $9.00,"16 or to similarly increase the "non-primary line SLC caps to at least the same level currently in effect for price cap ILECs."17 Since higher end user charges will result from higher SLC ceilings in ROR areas, MCI's demand for higher caps on ROR carrier SLCs directly conflicts with the Act's comparability mandate for rural rates and the intent of Congress to avoid increases in consumers' rates.18

2. The Associations Oppose MCI's Request for Higher PICCs in ROR Areas as a Means of Recognizing Higher Common Line Costs

Similarly, MCI asserts that the Commission should burden ROR LECs' customers with the higher common line costs of ROR carriers by establishing PICC ceilings above the caps for price cap carriers.19 Although the Associations support an interim plan to recover more non-traffic sensitive costs through flat-rate carrier charges, while at the same time enforcing geographic toll rate averaging and comparable rural rates,20 higher PICC ceilings in high cost ROR areas pose a significant threat to rate averaging and will clearly undermine rural access to interstate competition. The Associations reiterate that the Commission must not provide IXCs the increased incentive to pass-through PICC disparities and thus violate the rate parity mandate and discourage rural economic development efforts in rural areas.21 Any PICC charges and increase in multiline business SLCs for ROR carriers must be limited to the price cap carriers' nationwide averages.

C. An Immediate Transition to the Price Cap Structure is Both Unnecessary and Potentially Harmful

The Associations previously noted 22 that an immediate transition to the access rate structure adopted for price cap carriers may not only harm rural customers, but also yield few of the benefits highlighted in the NPRM. To the contrary, the Associations firmly believe -- and the record demonstrates -- that ROR LEC PICCs as well as the CCL charge will not disappear, unlike their price cap counterparts. Because critical differences in circumstances faced by ROR carriers preclude the elimination, or even the significant diminution, of the per minute CCL charge in the long run, the Commission's proposal to transfer the identical price cap structure to ROR carriers' will burden the ROR carriers' customers with unlawful higher rates.23

Several parties concur with the Associations and provide specific evidence to this effect. JSI provides an analysis of the proposed access rate structure changes for ROR carriers, based on information provided by NECA. Due to essential differences in the cost characteristics between ROR LECs and price cap LECs, JSI finds that the CCL would "not [be] eliminated earlier than 2008," and would even "increase in the near-term, as the SLC and PICC increases are limited on an annual basis."24 Likewise, the Minnesota Independent Coalition warns that the CCL charges remain a significant source of revenue for ROR LECs and notes that for some of its members, interstate CCL revenues exceed $10 per line per month.25

Notwithstanding its support for the imposition of the price cap rate structure on ROR carriers, MCI cites the NECA and USTA analyses as demonstrating that the simple extension of the price cap LEC access charge structure to ROR LECs would result in "unsupportable" PICC levels.26 Urging the Commission to proceed cautiously, MCI recommends that the Commission allow for a transition period27 and resolve remaining price cap access reform issues "before embarking on a rulemaking that could require over a thousand small independent ILECs to provide annual cost studies, that could require small carriers to increase investment to ensure that reform policies are implemented as ordered, and that would ultimately impact less than ten percent of interstate access lines."28

D. The Record Shows that ROR Circumstances Vary Widely

As expected, the record clearly indicates that the circumstances of ROR carriers vary significantly. Parties such as TDS,29 the Minnesota Independent Coalition,30 and the

Western Alliance31 affirm the Commission's initial premise for its bifurcated reform proceedings: "rate of return LECs, especially those in rural and insular areas face different market conditions and incur high costs."32 Indeed, these comments illustrate that most ROR carriers depend on access as a significant source of revenue.33

Nonetheless, specific circumstances vary widely. The Minnesota Independent Coalition points out that its members' interstate CCL revenues range from a monthly per-line amount of less than $5 to one that exceeds $10.34 The Minnesota Independent Coalition goes on to cite survey data showing that one out of every three rural LECs relies on revenue from a concentrated few, high volume customers.35 USTA reiterates that ROR LECs operate in diverse service territories and "vary greatly in size, technological development, and business organization, and in the types of state regulation imposed on them."36 The Independent Telephone & Telecommunications Alliance (ITTA) agrees with the Commission and other commenters that ROR LECs do not comprise a "homogenous group," noting a "wide variation in the size, systems and serving areas" of its own mid-size members.37

ROR LECs face diverse competitive situations as well. While parties such as TANE38 and Fred Williamson & Associates39 have seen little evidence of competitive pressure, USTA states that "as technology and markets evolve, competitors will be free to deploy the most advanced and economical technologies to target the business users currently served by [ROR] LECs." 40 The comments, in other words, generally highlight the likely differences in both the timing and nature of the development of competition in rural areas.

E. Because the Exact Impact of a Transition to Flat Charges is Uncertain, the Commission Cannot Measure Whether Comparable Rates will Result

These varied circumstances, combined with pending uncertainties related to the universal service and separations reform proceedings, make it nearly impossible for the Commission to properly measure whether its reform proposals will result in comparable rates between urban and rural areas. To fulfill its obligations under § 254, the Commission must delay implementation of permanent reform until these issues are more clearly resolved.

II. THE COMMISSION'S GOALS WILL BE FRUSTRATED BY IMPOSING HIGHER SLCs AND PICCs ON SECONDARY LINES

A. The FCC's ROR carrier access reform rules should not treat primary and non-primary residential lines differently

Although the Eighth Circuit upheld the Commission's residential primary/non-primary line distinction for price cap carriers, the Commission should not opt to treat ROR LECs' non-primary residential lines differently from their primary residential lines. The Court's decision was based on particular facts that applied specifically to price cap carriers and cannot easily be applied to small, rural companies. Because ROR and price cap costs and the resulting universal service impacts remain so disparate, the line distinction should not be used even in the interim. Otherwise, rate comparability will be an impossibility.

Furthermore, the record clearly indicates that the Commission's rules requiring higher SLCs and PICCs on price cap carriers' secondary lines have caused numerous problems that are not yet resolved. Commenters reference a myriad of administrative difficulties, "identification" problems due to the lack of a Commission definition and other factors.

USTA provides the Commission a list of compelling reasons to avoid imposing higher SLCs and PICCs to these lines, citing universal service concerns, economic considerations,41 and finally, administrative realities.42

> The vast majority of [ROR LECs] are small in size and lack the operations support capability even to begin to make these distinctions ... implementing a hypothetical and artificial distinction between 'primary' and 'non-primary' residential lines for rate-of-return LECs is unworkable, and should not be ordered by the Commission.43

MCI simply expresses frustration over the implementation of the primary line distinction for price cap carriers, restating the absence of a standard definition for defining non-primary lines. "In no event should the Commission permit rate-of-return carriers to begin assessing the PICC unless the implementation issues that have arisen in connection with the price cap PICC have been resolved."44

The Associations remind the Commission that customers will also be puzzled as to the

Commission's rationale. As the Western Alliance correctly notes:

> It makes little economic sense to charge a rural residential customer a higher SLC and PICC for a second line that costs less to install and maintain than the customer's primary line. It makes even less sense [and is unlawful under 47 U.S.C. 254(b)(3)] for a rural household to be charged a significantly higher SLC and PICC for a second line than an urban household.45

B. Parties Agree that Different Treatment of Primary and Secondary Lines in Rural Areas Defeats the Objectives of Universal Service

As explained in the comments and by the record in CC Docket No. 97-181, the Commission's imposition of the artificial residential line distinction on ROR carriers will severely hamper rural and urban comparability for -- and access to -- connections used for advanced telecommunications services. ICORE raises the concern that "very simply, in rural America, a SLC charge of $9.00, even phased in over time, will cause customers to disconnect one or more of their affected lines."46 Congress certainly did not mean for the post-1996-Act regulatory framework to stifle rural Internet access.47

Comments of parties such as ITCs, Inc. also concur with the Associations' comments regarding the statutory necessity for rate comparability. ITCs, Inc. states that the need for rural/urban comparability "applies to all access elements but becomes most evident in the treatment of second residence and multiple business lines."48 ITCs, Inc. continues:

> Not only does the proposed structure severely prejudice rural customers by making information access more expensive, it will discourage business development and productivity too thereby negatively impacting rural economic and social well-being. 49

Significantly higher SLCs for "non-primary" lines would simply discourage the growth in second lines that benefits all subscribers by reducing per-line costs while encouraging participation by residential customers in the "Information Age."50

III. THE RECORD ESTABLISHES URGENCY FOR PRICING FLEXIBILITY

Many parties51 find that the current ROR access charge scheme, under which customers pay averaged access rates, hinders their ability to respond effectively to competitive market pressure. For this reason, the record is replete with requests for immediate and significant pricing flexibility. Fear and certainty that customers in some markets will soon be driven to competitors because of the regulatory burdens and costs associated with the current regime has generated an urgent call for regulatory relief. AllTel explains that the requirement to average access prices across a study area for its markets containing low cost/high margin customers subjects these markets to further competitive pressures.52 "After-the-fact regulatory relief is too reminiscent of an offer of fire insurance after the house has burned."53 Indeed, deregulation is one of the chief purposes of the 1996 Act.54

OPASTCO, TDS and USTA also suggest that the Commission should, at a minimum, adopt immediate pricing flexibility measures for the common line rate elements,55 and allow commonly owned companies to choose on an individual basis whether to participate in the common line pool. Each requests, too, that the Commission permit zone pricing of SLCs, PICCs, and the CCL charge within each study area served by a ROR carrier that does not participate in NECA's common line tariff pool.

The Associations concur that significant flexibility in rate structure design must be a major goal of any access reform, since otherwise economic distortions will result.56 As OPASTCO states:

> Adoption of pricing flexibility measures will further the Commission's goals of economic efficiency and cost causation in that it will allow ROR carriers to create a stronger correlation between the cost of serving an individual or group of customers and the rates that they and their IXC are charged. Without pricing flexibility, unregulated new entrants will be able to offer lower rates...This is not competition, but arbitrage, created by the regulatory environment.57

Nonetheless, the Associations reiterate that because compliance with the rate comparability requirements of § 254 cannot be measured and therefore ensured by the Commission's access reform alone, any changes to the access rate structure for ROR LECs should be transitional and consistent with the rural LEC transitional universal service plan.

IV. REMOVAL OF GSF FACILITIES FROM INTERSTATE REVENUE REQUIREMENT IS INAPPROPRIATE AT THIS TIME

A. The Proposed Reallocation of General Support Facilities (GSF) will Deprive Small ROR LECs' of Full Recovery of Increased Costs

Many ROR LECs use third party vendors under long term contracts, rather than their own general purpose computers, for billing and collection. In fact, USTA indicates that "more than five hundred ROR LECs contract for billing services, and thus do not have costs related to billing and collection services now included in GSF."58 For this reason, the Associations explained in their comments that small ROR carriers will find it difficult or impossible to recover any increased costs due to reallocation, unless and until the contracts are renegotiated.59

The record clearly supports this claim. GVNW's filing, representing approximately 200 small telcos, provides data illustrating the drastic impact the proposed GSF rule change would have on the ability of small rural LECs to recover their cost of provisioning the toll billing for interexchange carriers.60 Several individual, small telcos also filed comments in this proceeding to specifically oppose the removal of GSF facilities from the interstate revenue requirement. According to their comments, these companies already find limited opportunities to reduce billing and collection costs. They further warn that the proposed change would provide an unintended incentive to terminate billing and collection agreements with the IXCs altogether.

B. The Commission should Reject its GSF Reallocation Proposal to Avoid Resulting Confiscation

The Associations remain concerned about the potential for confiscation if the Commission's rules do not recognize the existence of these private contracts. As stated in earlier comments, these contracts were made in reliance on a certain set of rules. Changes to these rules, without ample opportunity to recover actual costs from IXCs, will leave small LECs unable to fully recover costs by these carriers. The Commission should reject this proposal, "which would jeopardize the billing and collection service currently provided to interexchange carriers."61

V. PROPOSALS TO BOOST IXCS' REVENUES BY ANNIHILATING LEGITIMATE ILEC REVENUE REQUIREMENTS ARE UNJUSTIFIED AND UNDERMINE THE REASONABLE RURAL PARITY THE 1996 ACT CONTEMPLATES

AT&T, MCI and GCI argue strenuously, but unpersuasively, for various access "reforms" that simply dress up their customary demands for reductions in what they pay to rate of return ILECs for local pickup and delivery of their traffic. Their self-interest is evident, especially since comments point out that they have not been passing the access charge reductions they achieve through to customers.62 In contrast, others observe that the IXCs have been quick to pass through the flat rated PICC charges imposed in the price cap LEC access proceeding.63 It is hard to see how the nation's consumers will be better off because small and midsize ILECs' revenues -- but not their underlying costs -- are eroded so that the IXCs' profits may increase.

A. Proposals to Reduce Rate Levels or Extinguish Current Costs By Regulatory Redefinitions Are Unsound

Although nominally directed at price cap LEC access charges, MCI's renewed insistence on prescribed FLEC-based proxy costs64 is an effort to keep more of its customer revenues by having ILECs' embedded costs defined out of existence by government fiat. GCI also opposes embedded cost recovery, sneers at any special ILEC recovery mechanisms and gloats that competitive markets will prevent incumbents from being "kept whole."65 However, for the Commission to label actual costs as no longer recoverable as legitimate costs of doing business would be a poor way to encourage vital and evolving rural networks, as the 1996 Act intends. Nonrecovery by redefinition also presents serious confiscation issues which have not been resolved. Beyond that, the Associations object to the IXCs' presumption that the Commission will be able to validate a FLEC methodology that will reliably correlate with ILEC costs, and particularly with rate of return LEC costs. Even the effort to develop a proxy to identify high cost support for the largest ILECs has a long way to go. Moreover, the Eighth Circuit held in reviewing the price cap access charge decision that the Commission could keep traditional actual cost-based rates in effect while letting the market move prices towards forward looking costs. As the Commission explained to the court, there is no statutory requirement to base rates on forward looking costs.66 Indeed, rate of return LECs' access charges based on actual costs have been prescribed for many years, and the Commission has not made the finding that current rates are unlawful necessary to prescribe new rates under §205(a).

GCI's reasoning (p. 4) that access charges must be too high because interstate retail rates do not cover access costs in the high cost markets in its region is specious. It complains that it has to compete against nationally averaged rates. However, it is precisely because the costs in rural areas are higher that Congress codified in §254(g) the very rate averaging and rate integration policies that GCI challenges. In any event, GCI itself selected the markets it serves and is free to serve whatever routes it chooses.

Access rate levels are not the issue in review of the access charge structure. The IXCs can raise challenges of that sort by objecting to annual rate filings, where ILECs (unlike the IXCs that are complaining) must still provide cost support and defend their rate levels as cost based.

B. The Commission Should Reject AT&T's Demand to Reduce Its Access Bills by Prescribing a Low Rate of Return

AT&T also seeks to slash rate of return LECs' rates and boost its own profitability by calling for a sharply reduced interstate rate of return.67 Its reasoning is that the cost of capital decreased after the last prescription took place in 1990. AT&T ignores the drastic change in the risks confronting ILECs since enactment of the 1996 Act, which opens the local exchange market to competition, in sharp contrast to the situation at the time of the last rate of return prescription. It also forgets that the implementation of the new law has thrown rate of return carriers' explicit and implicit universal service support into uncertainty, including the burden that will be placed on state cost recovery and universal service mechanisms, which further increases the risks in high cost states, where many rate of return LECs serve. Moreover, since AT&T filed its proposal, global economies have shown growing instability and financial markets have grown extremely volatile. Technology-driven industries like the telecommunications industry have not been spared from the financial jitters.

This time of economic and regulatory turmoil could hardly be less appropriate for launching a costly, burdensome and complex process to determine economic conditions which have even experts in finance and economics bewildered. The Commission is looking at the incentives for investment in the nationwide public network to deploy the nationwide advanced broadband capabilities Congress has endorsed in §706 and §254. Is the Commission prepared to explain to Congress why it is simultaneously embarking on a costly proceeding sure to stifle rural ILECs' investment incentives if it further dims the prospects for a fair return on risky investment on rural participation in the nation's future as an information rich economic force? The Commission should reject AT&T's rate of return prescription proposal and use its resources to finish the huge implementation tasks and infrastructure encouragement duties Congress thrust upon it in the 1996 Act.

VI. THE COMMISSION SHOULD EXPLORE CONSTRUCTIVE SUGGESTIONS FOR COORDINATED ACCESS AND UNIVERSAL SERVICE REFORMS THAT ENSURE RURAL AND URBAN COMPARABILITY AND GEOGRAPHIC RATE AVERAGING

A. Continuing Usage-Based Recovery of the Residual CCL at the Reduced Level Interim Capped SLCs and PICCs Will Properly Balance Universal Service and Efficiency Interests

AT&T's proposals attach first priority to eliminating all usage-based common line recovery. However the record clearly establishes that the immediate increase to the SLC ceilings and the higher PICC ceilings that would be necessary would put rural areas at a disadvantage and conflict with the statutory standard of reasonably comparable rates and services for rural and urban subscribers. GVNW's proposal (p. 5) to bulk bill the residual to the IXCs may also be worth considering, if the IXCs prefer a non-usage based method. There again, the IXC's could not lawfully deaverage the charges they pass through to their end users to recover bulk billed common line costs by reason of the requirements of §254(g) for interexchange charge averaging.68

1. Usage-based Recovery of Rate of Return LECs' Above-Average Common Line Costs from Interexchange Carriers Is Justified by Valid Universal Service Concerns about High SLC and PICC Caps

Unless the Commission can place the rural common line cost differential in a universal service mechanism, the better course is to continue the usage-based CCL charge. The reduced level made possible by the rate of return LECS' use of flat-rated SLCs and PICCs up to the comparable caps will be a gain in efficiency, and universal service needs are a sound reason not to make further prescriptive changes during the transition to competition and deregulated, market-driven charges.69

2. The Commission Should Not Increase the Residual Usage-Based CCL Rate By Adding New Costs

USTA (p. 17) agrees with the Associations that the Commission should not increase the CCL by transferring the line side port costs. As MCI recognizes (p.17), unlike the price cap access regime, the higher costs of rate of return LECs and capped SLCs and PICCs will prevent transfers of costs from the switching category to the common line revenue requirement from transitioning the entire augmented common line costs to flat-rated recovery. As reducing usage based recovery of non-traffic sensitive costs is the reason for the Commission's proposal to shift those costs in with the non-traffic sensitive common line costs, MCI correctly reasons (pp. 17-18), the whole exercise will accomplish nothing but administrative burdens and study costs for rate of return LECs and a shift from one usage based charge to another.70 USTA71 and the Western Alliance72 have also explained that, if shifts from the switching category nevertheless occur, corrective action will be essential to preserve the interim rural LEC support the Chairman has promised.73

The Commission should also refrain from transferring the residual TIC charge from the usage sensitive transport charges to the residual usage-based CCL charge. As USTA points out,74 the charge identifies the high cost of providing transport services in less densely populated areas and the change would not phase out the TIC, as is the case under the price cap access regime, since the rate of return ILECs do not have an annual productivity sets off that could be used to retire the TIC charge.75 TDS Telecom has also explained (p. 20) that a shift would complicate the administration of the NECA pools, since membership in the traffic sensitive and common line pools is not identical.

B. AT&T's Proposal to Recover Rate of Return LECs' Above Average Traffic Sensitive Costs Via a Non-Discriminatory and Competitively Neutral Universal Service Mechanism Merits Serious Attention

AT&T also suggests76 capping rate of return carriers' traffic sensitive rates77 at price cap LECs' nationwide average traffic sensitive rates. Under this plan, ILECs would then recover the shortfall from universal service support collected pursuant to §254(d).78 Shorn of the misguided rate of return represcription scheme, the proposal is worthy of consideration as a way to alleviate the implicit subsidies and uneven burdens of nationwide rate averaging on different IXCs. The proposal would, of course, have to be considered in a universal service proceeding, using the mandatory §254/410(c) joint board process.

The AT&T CCL "rate pegging" and universal service proposal would comply with several of the §254 requirements and standards. First, it would comply with the requirement of §254(d)for all carriers that provide interstate to contribute on an equitable and non-discriminatory basis to federal universal service support. Currently, only IXCs and their customers bear the universal service burden of providing averaged long distance rates at what AT&T identifies (p. 5) as a rate of return access charge disparity of 2.5 to 3 times over the price cap average rate. AT&T bears the lion's share of this support because it is the interstate carrier of last resort and serves high cost routes that other IXCs have avoided. In addition, the proposal would increase the incentive for other IXCs to compete to serve the high cost rural areas, advancing the Act's pro-competitive agenda.79

Using a federal universal service mechanism would be manifestly appropriate, since the geographic rate averaging requirement is imposed as a component of the Act's universal service provisions. The Commission could model a support mechanism on the existing Long Term Support pattern, as Home Telephone Company suggests.80 The same mechanism would also be available to support above-average costs for providing mandatory interstate service to an unserved area pursuant to §214(e)(3), should the Commission need to invoke that authority in the future.

C. A Separate Mechanism to Facilitate Mandatory Geographic Rate Averaging Must Not Be Used as a Precedent to Justify Unlawful Diversion of Interstate High Cost Support from Affordable and Comparable Local Rates

If it adopts AT&T's universal service proposal, the Commission should provide for a separate USAC-administered fund or account for any such traffic sensitive support. The support would be generated to meet the identified shortfall and collected by means of universal service contributions. Existing high cost support mechanisms and contributions should in no event be used to fund this new traffic sensitive short fall or, as explained below, to reduce access charges where there is no double recovery. The Commission should be careful to match the support and the shortfall precisely. It must not create the confusion and uncertainty it has created by its blanket instruction for price cap LECs to deduct universal service support payments from their interstate access revenue requirements. No one can disagree that an ILEC should not recover the same costs twice, once through the new federal universal service program and again in its access charges. However, the Commission must also scrupulously avoid deducting new universal service support from access charges (a) where there is no double recovery in the access charges; or (b) when the collective effect of the access charge and separations rules transfers what has been interstate high cost support into a cost to be recovered within each state. The Eighth Circuit's rejection of the Texas Commission's claim on unlawful jurisdictional cost shifts as premature did not condone a requirement that results in an intrastate revenue shortfall on the merits. Indeed, the Court expressly relied on the Commission's representation that its rule merely sought to prevent costs recovered from the new federal universal service fund from being recovered again from interstate access charges.81 The Commission needs to develop a more rigorous analysis to offset only interstate costs that are still included in interstate access charge revenue requirements and are also collected from the interstate portion of the new 25% federal/75% state (or other revised ratio) universal service fund that has replaced the previous 100% federal support previously recovered via interstate access charges. That change in federal responsibility is equivalent to a jurisdictional shift of the costs that